

STANDARD CONDITIONS OF PURCHASE

1.0 DEFINITIONS

- 1.1 **Purchaser:** Minera Panama S.A.
- 1.2 **Engineer:** Lycopodium Minerals Pty Ltd, Perth, WA
- 1.3 **Supplier:** The party to whom the Purchase Order is addressed
- 1.4 **Sub-Suppliers:** Suppliers or subcontractors of materials, equipment and services to Supplier in connection with the Goods to be supplied hereunder.
- 1.5 **Purchase Order:** The Purchase Order and all documents including these Standard Conditions of Purchase incorporated by reference therein as approved from time to time by the Purchaser.
- 1.6 **Goods:** The machinery, plant equipment, apparatus, materials or services of all kinds to be supplied in accordance with the Purchase Order.
- 1.7 **Purchase Price:** The price of all Goods and/or Work to be supplied in accordance with the Purchase Order which shall include all costs and charges to the Delivery Point but shall exclude (unless otherwise stated) any taxes or duties.
- 1.8 **Delivery Date:** The date stipulated in the Purchase Order for the delivery of Goods including execution of Work at Site (if any) in accordance with the terms and conditions of the Purchase Order.
- 1.9 **Delivery Point:** The place stipulated in the Purchase Order for delivery of the Goods (the legal point of sale).
- 1.10 **Site:** The designated place at which the Goods will be used.
- 1.11 **Work:** Any and all work to be performed on the Owner's premises in connection with the supply, installation and/or commissioning of the Goods.

2.0 ENGINEER

- 2.1 For all purposes of the Purchase Order, the Engineer is authorised to act for and on behalf of the Purchaser in the manner provided in the Purchase Order.
- 2.2 The Supplier shall obey and comply with all reasonable demands, decisions, instructions and directions of and notices given by the Engineer pursuant to the Purchase Order.
- 2.3 All technical communications, notices, notifications, submissions, reports and the like which the Supplier is obliged to or may at any time make or give to the Purchaser pursuant to the Purchase Order shall be made or given in writing, in English to the Engineer.

3.0 CONTRACT

The Purchase Order shall form the entire agreement between Purchaser and Supplier and supersedes all previous communications and negotiations. No terms stated by the Supplier in accepting or acknowledging the Purchase Order or in the performance of the Purchase Order or the invoicing of the Goods or Work shall be binding upon the Purchaser unless accepted in writing by the Purchaser.

4.0 LAW APPLICABLE

- 4.1 Purchaser and Supplier accept and agree to submit to the exclusive jurisdiction of the courts of the State of Western Australia as the proper law of the Contract.
The Supplier shall conform with the provisions of all laws (federal, state or municipal) in any way affecting or applicable to the execution of the Purchase Order and shall obtain all permits, licences and give all notice required to be given and shall pay all fees, deposits and taxes in connection therewith.

5.0 PRECEDENCE OF DOCUMENTS

- 5.1 If Supplier discovers any inconsistency between the documents comprising the Purchase Order, the Supplier shall immediately notify the Purchaser. In the case of any such inconsistency, the order of precedence of documents shall be the Purchase Order itself, Special Conditions of Purchase, Standard Conditions of Purchase, specifications, drawings.

6.0 INFRINGEMENTS

- 6.1 The Supplier warrants that the sale or use of the Goods will not infringe or contribute to the infringement of any patents, trademarks or copyrights in any or all countries.
The Supplier shall indemnify the Purchaser against any loss or damage (including legal fees and other costs of defending an action) arising from breach of this warranty.

7.0 ASSIGNMENTS

- 7.1 The Supplier accepts that no part of this Purchase Order or liabilities thereunder or benefit derived therefrom shall be subcontracted, ceded or assigned to third parties without the prior written consent of the Purchaser and then only under such conditions as the Purchaser may impose.
- 7.2 The Purchaser may, at its sole discretion, assign and/or novate the Purchase Order to an associated corporate entity at any time without requiring the approval of the Supplier.

8.0 CHANGES AND MODIFICATIONS

Supplier shall not substitute any alternative to the Goods covered by the Purchase Order without the prior written consent of the Purchaser.

9.0 CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

- 9.1 Supplier shall keep secret and confidential (except to Sub-suppliers accepting a like obligation of secrecy and confidentiality, and then only to the extent necessary for the performance of the Purchase Order) all information furnished by or on behalf of the Purchaser and/or Engineer in connection with the Purchase Order. Information furnished by the Supplier to the Purchaser and/or Engineer will be treated by the Purchaser and/or Engineer with the same obligation.
- 9.2 The Supplier shall retain all intellectual property rights to all documents, data, designs, drawings, equipment, processes and everything else supplied by him. The Purchaser and his duly authorized agents, sub-agents and employees may use the documents, data, designs, equipment, processes and everything else only for the purposes of maintaining and operating the equipment supplied by the Supplier under this Purchase Order.

10.0 INSURANCE

- 10.1 Unless otherwise specified in the Purchase Order, the Supplier shall insure all Goods to their full insurable value to the Delivery Point and keep them insured against all insurable risks until the Goods are received and accepted by the Purchaser at the Delivery Point.

11.0 SUPPLIER'S DRAWINGS AND DATA

- 11.1 Where the Purchase Order calls for the Supplier to supply drawings, descriptive documents and/or other technical data to be supplied by a specific date, and such documents and data are not supplied by the said date, except for delays due to the Engineer or act of God, the Purchaser reserves the right, after providing Supplier seven (7) days notice to rectify, to cancel the Purchase Order without prejudice to the Purchaser's rights to claim any damages it may have suffered due to the Supplier's failure to perform and the Supplier shall have no recourse to any charges, costs, expenses, direct or consequential losses resulting from the Purchaser's cancellation of the Purchase Order.
- 11.2 In the event that certified information provided by the Supplier is subsequently proven to be incorrect and causes the Purchaser to undertake rectification activities or suffer any loss or claim, then the Supplier shall be liable for all costs associated with the required rectification of the Goods and/or Work supplied, losses and claims and the Purchaser reserves the right to charge the resultant costs, losses and claims directly to the Supplier or deduct such sums from monies due or to become due to the Supplier by the Purchaser.

12.0 LIQUIDATION

- 12.1 If the Supplier, before completion of the Purchase Order becomes insolvent, applies for a voluntary liquidation order, compounds or compromises with its creditors, should be sequestered, is placed under judicial management, or has a Court Order made against it providing for any periodic payment to its creditors, then the Purchaser may by written notice to the Supplier, cancel the Purchase Order without prejudice to the Purchaser's rights to claim damages and any other sums due to the Purchaser from the Supplier.

13.0 DELIVERY DEFAULT BY SUPPLIER

- 13.1 The Supplier hereby acknowledges that should delivery of the Goods and/or Work be delayed beyond the Delivery Date, or such extension of the date that the Purchaser may have granted, then the Purchaser without prejudice to any of its other rights shall have the right to cancel the Purchase Order in whole or in part without payment to the Supplier of the Purchase Price or other compensation in respect of the cancellation and to reclaim on demand any portion of the Purchase Price that may have been paid in advance and/or on account in respect of the cancellation.
- 13.2 If by reason of any cause beyond the reasonable control of Supplier, Supplier shall have been delayed in the supply of the Goods and/or Work at the Delivery Point and the delay occurs before the Delivery Date, Supplier shall give notice to Purchaser in writing of any such delay and any claim Supplier may have for an extension of time. Such notice shall be given within seven (7) days after the occurrence of the delay. Provided the abovementioned notification is made within the specified time, the Purchaser may within a reasonable time of receipt of such notice grant to Supplier in writing such extension of time for the supply of Goods and/or Work at the Delivery Point as Purchaser considers reasonable but Supplier shall not be entitled to any extra compensation for any such delay.

14.0 SUSPENSION OF PERFORMANCE

- 14.1 Purchaser may at any time by written notice to Supplier suspend

18.0 Garantía

18.1 El Proveedor garantiza que las mercancías suplidas bajo esta orden de compra deberán ser nuevas, encajar con los fines especificados en la Orden de Compra, deberán cumplir con todas las especificaciones y dibujos y deberá desempeñarse en todos los aspectos a los requisitos de la Orden de Compra.

18.2 El Proveedor garantiza al comprador todos las mercancías suplidas contra defectos de diseño, mano de obra y materiales, y estar libre de defectos por un periodo de doce (12) meses después de ponerlo en marcha y/o la colocación de dichas mercancías en servicio por el Comprador o dieciocho (18) meses después de la entrega de las mercancías al Punto de Entrega nominado del Comprador, lo que ocurra primero.

15.0 CANCELLATION

- 15.1 The Purchaser may at its option cancel any unshipped Goods. If the Purchase Order covers any standard stock merchandise, the Purchaser's obligation shall only be to pay for merchandise shipped prior to the cancellation. If the Purchase Order covers merchandise manufactured or fabricated to the Purchaser's specifications or specifications prepared by the Supplier for the Purchaser, upon receipt of notice of cancellation the Supplier shall cease manufacture, supply or work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost

incurred consequent upon such cancellation. Provided that the Supplier is not in default the Purchaser shall pay to the Supplier the cost incurred by the Supplier in connection with this order prior to the date of cancellation plus six percent (6%) of the foregoing cost in lieu of profit, provided however that the total cancellation payment plus previous payments shall not exceed the Purchase Price.

- 15.2 The Supplier's cost shall be as agreed in writing with the Purchaser prior to submission of any claim for such cost, and the claim shall be supported by documentation viz copies of relevant timesheets, cancelled materials purchase orders etc in substantiation of the claim.
- 15.3 In the event that an agreement cannot be reached with the Purchaser, the Supplier's cost shall be as assessed and agreed by an independent party which shall be mutually agreed by the Purchaser and Supplier.
- 15.4 Upon payment of the agreed Supplier's cost plus six percent (6%) title to and property in any material or incompleting merchandise shall pass to Purchaser and following such payment the Purchaser shall be entitled to take delivery of the material or incompleting merchandise.

16.0 NON WAIVER

- 16.1 Failure of the Purchaser to insist on strict performance of any of the terms and conditions of the Purchase Order, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify the Supplier in the event of breach or the acceptance of or payment for any Goods or approval of design, shall not release the Supplier from any of the warranties or obligations of the Purchase Order and shall not be deemed a waiver of any right of the Purchaser to insist upon strict performance hereof or any of its rights or remedies as to any such Goods, regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of the Purchase Order by the Purchaser operate as a waiver of any of the terms hereof.

17.0 INSPECTION / EXPEDITING

- 17.1 All Goods shall be subject to quality control and assurance by the Supplier, the quality control system shall be subject to monitoring to the satisfaction of the Purchaser.
- 17.2 The Purchaser or its agent shall be entitled to inspect, expedite, examine and test materials and workmanship of Goods being manufactured and/or assembled and shall have access at all reasonable times to the Supplier's works or any Sub-supplier of the Supplier to carry out such inspection and expediting activities.
- 17.3 Supplier shall furnish to the Purchaser every four weeks a progress report which shall detail the progress against the planned activities (i.e. engineering, materials, fabrication) and include advice of any matter that may affect the Delivery Date.
- 17.4 Immediately after placing any sub-order for major components of the Goods, Supplier shall, if so requested, furnish the Purchaser with one unpriced copy of the purchase order showing Sub-supplier's name, order number and promised shipping dates.
- 17.5 Inspection by Purchaser or the issue of a document signifying acceptance of the Goods in respect of quality, quantity, workmanship and/or completeness shall not relieve the Supplier of its obligations and/or liabilities under the Purchase Order, should it be found at a later date that the Goods are not in accordance with the Purchase Order, fair wear excepted as reasonably determined by the Purchaser.

18.0 WARRANTY

- 18.1 The Supplier warrants that the Goods supplied under this Purchase Order shall be new, fit for the purpose specified in the Purchase Order, shall be in full accordance with the specifications and drawings and shall perform in all respects to requirements of the Purchase Order.
- 18.2 The Supplier shall warrant to the Purchaser all Goods supplied against faulty design, workmanship and materials and be free from defects for a period of twelve (12) months after commissioning and/or the placement of such Goods into service by the Purchaser or eighteen (18) months after delivery of the Goods to the Purchaser's nominated Delivery Point, whichever occurs first.
- 18.3 In the event that the Supplier should offer a warranty period of an increased duration such longer period shall apply.
- 18.4 By mutual agreement, the Supplier shall replace and/or rectify at its own expense (including but not limited to replacement goods, material,

- transport and labour) all defects or deficiencies arising in the Goods during the warranty period and these replacements and/or rectifications shall themselves be subject to the foregoing obligations for a period of twelve (12) months from the date of delivery or re-installation whichever is appropriate.
- 18.5 The Purchaser shall notify the Supplier of any defects or deficiencies occurring during the warranty period and the Supplier shall rectify such defects or deficiencies and/or replace defective Goods without delay and in any event within seven (7) days of the date of such notification or as mutually agreed.
- 18.6 Where the Goods have been supplied within Panama, the Supplier shall at its entire expense replace and deliver the Goods to the Site.
- 18.7 Where replacement/rectification works are required to be carried out on the Goods in-situ at the Site, such replacements or rectifications shall be entirely at the Supplier's expense (including but not limited to replacement goods, material, transport and labour).
- 18.8 Where the Goods have been supplied from outside of Panama, the Supplier shall at its entire expense replace and deliver the Goods to the original Delivery Point nominated by the Purchaser.
- 18.9 Purchaser reserves the right, in the event of inability or refusal by the Supplier to correct defective or incomplete Goods, or to perform any part of the Work in a timely manner, to correct such Goods or perform such Work with its own forces or those of another contractor and charge the resultant costs and expenses to the Supplier.
- 19.0 PACKING, MARKING AND SHIPPING**
- 19.1 The Goods shall be suitably packed, protected, marked and shipped as specified in the Purchase Order.
- 19.2 Hazardous materials must be packaged, documented and marked in compliance with all applicable regulations.
- 19.3 Goods from two or more Purchase Orders shall not be consolidated in any one package.
- 19.4 Spare parts shall be packed separately from the parent equipment and clearly marked "Spare Parts".
- 19.5 Goods to be sent in containerised shipments shall be in robust, moisture resistant packaging and suitable to permit on-top loading within the container.
- 20.0 DELIVERY**
- 20.1 All charges for packing including boxes, crates, cartons, materials and labour shall be included in the Purchase Price and all such packing materials shall become the property of the Purchaser.
- 20.2 The risk in the Goods remains with the Supplier until the Goods are properly delivered to the Purchaser at the nominated Delivery Point.
- 20.3 The Supplier warrants that it has and will deliver to the Purchaser, full and clear title to all Goods furnished by the Supplier in performance of the Purchase Order.
- 20.4 Supplier shall advise the Purchaser of its intention to deliver three (3) working days before despatching the Goods.
- 20.5 The property in any Goods supplied by the Supplier shall pass to the Purchaser upon full payment therefor by or on behalf of the Purchaser.
- 20.6 Where despatch of the Goods is delayed due solely to the fault of the Supplier or Supplier's Sub-suppliers and it is necessary to airfreight the Goods to meet the Delivery Date, then any such airfreight costs shall be at Supplier's entire expense.
- 20.7 Each order shall be delivered in one consignment unless otherwise agreed in writing.
- 21.0 PAYMENT TERMS**
- 21.1 Payment shall be made to the Supplier in full after all the requirements of the Purchase Order have been completed to Purchaser's satisfaction and Purchaser will pay Supplier within the prescribed time and in accordance with the payment provisions in the Purchase Order from receipt of Supplier's original invoice.
- Where the Purchaser has agreed to progress payments, the Supplier shall provide the necessary proof and documentation of progress in support of their claim or as requested by the Purchaser and the Supplier shall ensure that title and property in the Goods or that portion of the Goods claimed by the Supplier shall pass to the Purchaser and that the same are marked and identified as belonging to the Purchaser.
- 21.2 Payment may be delayed in the event of late receipt of invoices or for invoices submitted with errors and/or omissions or where the Supplier has failed to provide technical data in accordance with the provisions of the Purchase Order or where the Supplier submits an invoice which exceeds the total Purchase Order value. Such delays shall not jeopardise any other rights the Purchaser may be entitled to under the contract.
- 21.3 Where the Purchase Price including any agreed variations thereto exceeds One Hundred Thousand US Dollars (US\$100,000) equivalent, the Purchase Order shall be subject to a cash retention of five percent (5%) of the Purchase Price for the period of warranty as defined in Clause 18.0 above and the Supplier shall submit an official 'Tax Invoice' for each claim for payment which shall separately state the total value claimed less 5% retention plus VAT, if applicable.
- 21.4 Where the Purchase Price exceeds Five Million US Dollars (US\$5,000,000) equivalent the Supplier shall lodge with the Purchaser within twenty-one (21) days of the Purchase Order date, or within such further time as may be approved by the Purchaser, a Security Deposit equal to five percent (5%) of the Purchase Price to cover the execution of the Purchase Order (excluding warranty) by the Supplier.
- 21.5 Retentions and Security Deposits may be substituted by bank guarantees which shall be issued in favour of the Purchaser by a financial institution acceptable to the Purchaser. The bank guarantees shall be irrevocable, unconditional and duly stamped and enforceable in Australia. The bank guarantee to cover retention may be forwarded at any time prior to the final delivery of Goods and will be retained by the Purchaser until the end of the warranty period. Where a retention bank guarantee is not forwarded until the final delivery of the Goods, retention will continue to be deducted from payments until the bank guarantee has been received by the Purchaser.
- 21.6 The bank guarantee to cover a security deposit must be forwarded within the specified time and will be retained by the Purchaser until the Supplier has executed the Purchase Order in full (excluding warranty).
- Where a security deposit bank guarantee is not forwarded within the specified time, cash will be deducted from payments to the full value of the security deposit until the bank guarantee has been received by the Purchaser.
- The cost of establishing such bank guarantees shall be to the Supplier's account.
- 22.0 CONTRACT CORRESPONDENCE**
- The parties agree and accept that all correspondence pursuant to the Purchase Order:
- must be in writing and signed by a person duly authorised by the sender or in the case of electronic transmission, must contain the name of the duly authorised author,
 - may be delivered hard copy or by E-mail to the party to whom the notice is addressed,
 - unless otherwise agreed by the parties, shall be deemed to have been sent from the originator's place of business and deemed to have been received at the addressee's place of business seven (7) days after being sent,
 - in the case of electronic transmissions, shall be deemed to have been despatched the moment it enters a single information system outside of the control of the originator and deemed to have been received at the time it enters that information system.
- 23.0 TAXES AND DUTIES**
- 23.1 All prices and unit rates in the Purchase Order and any subsequent variations thereto shall not include any Value Added Tax (VAT), Goods and Services Tax (GST) or Withholding Tax (WHT) which may be applicable in the country of origin of the Supplier.
- 23.2 Any VAT/GST or customs duties or excise or any other tax that may become applicable on importation into Panama shall also be excluded from the Purchase Price.

24.0 FORCE MAJEURE

- 24.1 No liability shall attach to a party which is unable to perform its obligations under this Purchase Order due to an event of Force Majeure.
- 24.2 If either party is unable, wholly or in part, by reason of Force Majeure to carry out any obligation under the Purchase Order, it shall promptly give notice to the other party specifying the event of Force Majeure and the likely duration of its inability to perform. Thereupon that obligation shall be suspended so long as the event of Force Majeure continues.
- 24.3 If the circumstance of Force Majeure exceeds 30 days per event, then either Party may give notice to the other to cancel the Purchase Order.
- 24.4 Each party shall bear its own costs as a result of the Force Majeure.

25.0 LIMITATION OF LIABILITY

- 25.1 Neither party will be liable to the other party for any consequential, indirect or punitive loss, damage, cost or expense whatsoever (including, without limitation, loss of profits).
- 25.2 The liability of Supplier to the Purchaser arising out of or in connection with the Purchase Order shall be limited to the cost of re-performing the work under the Purchase Order, or the Purchase Price, whichever is the lesser.

26.0 DISPUTE RESOLUTION

- 26.1 The parties shall in good faith take all possible action to resolve by amicable settlement any potential dispute under the Purchase Order. If within fifteen (15) Days after a party gives notice to the other party of a potential dispute the Parties are not able to resolve the dispute without reference to executives of the Parties, the Parties must submit the dispute to senior off-Site executives of each party.
- 26.2 Within a further period of fifteen (15) Days, the executives will be required to either resolve the dispute or to produce a jointly signed statement declaring that they are unable to resolve the dispute.
- 26.3 Subject to clause 26.2, either party may give notice referring the dispute to litigation.

27.0 SUPPLIER'S WORK AT SITE

The following conditions apply where Supplier provides Work in connection with the supply, installation or fitting of the Goods by the Supplier or his servants or agents at the Site.

- 27.1 All Work at the Site shall be performed in a proper and workmanlike manner.
- 27.2 Without limiting any other rights of the Purchaser or the responsibility of the Supplier, if the Purchaser discovers in any part of the Work, any Goods or workmanship of an inferior quality, or different from that described in the Purchase Order, the Purchaser may by notice require the Supplier to remove the Goods, replace remedy or rectify that part of the Work within such reasonable time as the Purchaser may specify and if the Supplier fails to comply with the notice within the time specified then the Purchaser shall be at liberty to employ other persons to remove the Goods, replace remedy or rectify that part of the Work and all expenses, loss, claims or damage incurred shall be borne by the Supplier.
- 27.3 The Supplier shall supply all labour, tools, equipment and materials necessary to complete the Work.
- 27.4 The Supplier shall use its best endeavours not to impede or interfere with other work in progress on the Site.
- 27.5 The Supplier enters the Site at its own risk and shall also be liable for and indemnify the Purchaser and/or the Engineer against any loss, damage, claims or liability arising directly or indirectly out of the performance of the Work or presence on the Site including claims against the Purchaser and/or the Engineer whether alleging negligence on the part of the Purchaser and/or the Engineer and or otherwise.
- 27.6 The Supplier shall at its own expense provide and maintain the following insurances whilst at the Site:
- Public Liability insurance of not less than US\$5,000,000.
 - Workers Compensation insurance as required by law
 - Motor Vehicle Third Party insurance of not less than US\$2,000,000.
- 27.7 The Supplier shall at its own expense obtain all requisite licences and permits to comply with all laws in connection with the Work carried out at the Site.

- 27.8 The Supplier shall at its own expense comply with all site allowances and/or agreements which may be applicable to the Site and payable to its servants, agents and Sub-suppliers.
- 27.9 The Supplier, its servants, agents and Sub-suppliers shall comply with the rules and regulations of the Site and with the safety regulations of the Purchaser and with the reasonable directions and orders of the Purchaser.
- 27.10 The Supplier has full responsibility for selection and recruitment of labour, as necessary to complete the Work however Purchaser shall have the right to veto the use of any employee of the Supplier.
- 27.11 The Supplier performs all Work as an independent contractor and not as an agent or employee of the Purchaser.